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IN THE

Supreme Court of the United States

October Term, 1937.

No. 596.

JOHN G. RUHLIN, JENNIE B. RUHLIN, *et al.*,
Petitioners,

v.

NEW YORK LIFE INSURANCE COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONERS.

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I.

Opinions below.

The opinion of the District Court is not reported but is found at page 19 of the Record. The opinions of the Circuit Court of Appeals are not reported and are found at pages 25 and 39 of the Record.

II.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on September 27, 1937 (R. 43). Jurisdiction to issue the writ is found in the provisions of Section

240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229 section 1, (43 Stat. 938, 29 U. S. C. A. section 347, p. 359).

The date of the decree of the Circuit Court of Appeals, sought to be reviewed is September 27, 1937 (R. 39).

The petition for writ of certiorari was docketed to No. 596 October Term, 1937, on November 23, 1937. The writ of certiorari was granted on January 3, 1938.

III.

Statement of the case.

Prior to February 14th, 1935, John G. Ruhlin, the insured, brought an action at law against respondent in the Court of Common Pleas of Jefferson County, Pennsylvania, to recover certain monthly income payments, hereinafter referred to as disability payments, equal to \$10 per \$1,000 of the face of five policies of life insurance issued by respondent to the insured and under the terms of which respondent agreed to pay to insured said benefits upon receipt of due proof that the insured is totally and presumably permanently disabled before age 60, as defined under "Total and Permanent Disability" in said policies which were issued on the following dates:

No. 10,452,365	December 1, 1928,	face amount	\$10,000
No. 10,452,366,	December 1, 1928,	face amount	5,000
No. 11,165,728,	July 7, 1930,	face amount	4,000
No. 11,165,729,	July 7, 1930,	face amount	4,000
No. 11,165,730,	July 7, 1930,	face amount	4,000

(R-2-4)

The applications for the first two policies were made in Pennsylvania and the policies were presumably

delivered in Pennsylvania. The applications for the remaining three policies were made in Ohio and the policies were presumably delivered there.

Each of the policies contained the following incontestable clause:

"Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits."

On February 14, 1935 respondent caused said bill in equity to be filed reciting the institution of said action at law to recover said disability benefits, the issuance of said policies, that they had been obtained by means of false and fraudulent answers to questions contained in the applications for said policies and prayed for the reformation of said policies by eliminating and rescinding the disability and double indemnity provisions from said policies and for an injunction restraining the insured and the beneficiaries named therein, the other petitioners herein, from instituting any action on said policies including said action at law, pending at the time of the filing of the bill (R. 2).

Upon presentation of the bill the court issued a restraining order and granted a rule to show cause why a temporary injunction should not be granted (R. 12).

On March 2, 1935, petitioners filed motions to dismiss the bill of complaint and to dissolve the temporary injunction (R. 14).

On April 16, 1935, the court made an order overruling petitioners' motions to dismiss the bill and to dissolve the temporary injunction and enjoining petitioners from instituting any actions against respond-

ent and from proceeding with said action instituted in the state court and noted an exception to petitioners (R. 19).

On October 6, 1936, the Circuit Court of Appeals (consisting of Circuit Judges Davis and Thompson and District Judge Watson) filed an opinion affirming that part of the decree of the District Court which refused to dismiss the bill insofar as it sought the cancellation of the disability benefit provisions, and vacated the order restraining petitioners from prosecuting the action brought in the state court (R. 25).

On September 27, 1937, the Circuit Court of Appeals (consisting of Circuit Judges Buffington, Davis and Thompson), after a reargument, rescinded the previous decree of the Circuit Court of Appeals and affirmed the decree of the District Court (R. 39).

On November 23, 1937, petitioners filed in this Court a petition for writ of certiorari. Respondent filed a memorandum raising no objection to the granting of the writ and on January 3, 1938, this writ was granted.

IV.

The Question Presented.

The policies involved in this suit contain the following clause:

"Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits."

The provisions and conditions relative to "Disability and Double Indemnity Benefits" in said policies

provide they shall be payable upon receipt of proof, and, as relates to double indemnity, that the benefits shall be payable only if death resulted in a particular manner and not if it resulted from self destruction, etc., etc., and, as relates to disability benefits, that they shall be payable only if the insured is through injury or disease wholly prevented from performing any work, etc., for remuneration or profit, and then only if such disability occurs before the insured reaches a certain age; that they shall not apply if the disability resulted from self-inflicted injury or from military or naval service in time of war, or to the temporary or paid up insurance provided under "Surrender Values," etc., etc.; that due proof of the continuance of the disability may be demanded from time to time but, under certain circumstances, not more than once a year. There is no mention in these "provisions or conditions" that the sums promised are not recoverable in case of false answers in the application nor anything to indicate that they stand upon a different footing from the other obligations of the insurer in the policy in regard to defenses for alleged fraud in the procurement of the contract.

Is an intent clearly shown to except disability benefits from the incontestable clause?

V.

Specification of Error.

The Circuit Court of Appeals erred in holding (R. 41) that after the expiration of the period reserved for contests in the incontestable clauses of the life insurance policies, the respondent was not barred and precluded from rescinding the double indemnity and dis-

ability benefits contained in said policies on the ground of fraud in the procurement thereof.

VI.

ARGUMENT.

Summary.

The purpose of an incontestable clause in a life insurance policy is, concededly, to bar the defense of fraud in procuring the insurance after a certain period.

Respondent is attempting to contest these policies for fraud after the period has expired. The incontestable clause in these policies bars such defense. As drawn by the insurer, the exceptions to incontestability, contained in the clause, reserve the right to defend only for matters occurring subsequently to the issuance of the policy, such as non-payment of premium and matters intending to show that a claim for double indemnity or disability benefits made under the policy does not come within the provisions and conditions relating to such benefits contained in the policy.

If the incontestable clause is susceptible, also, of another construction, namely, that the double indemnity and disability benefit portion of the policy never becomes incontestable for false answers in the application, the insurer has used language which is uncertain and ambiguous and susceptible of two different but sensible or reasonable constructions. The one most favorable to the assured must be adopted.

The policies of life insurance involved in this case obligate the insurer to pay to the beneficiary certain sums upon the death of the insured and double that

amount, called "double indemnity," if his death results solely through accidental means. They also obligate the insurer to pay to the insured a certain sum, called "disability benefits," in the event that he is physically disabled.

The policies contain the following incontestable clause (R. 12):

"Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits."

More than six years after the first two policies were issued, and about four years and five months after the last three policies were issued (R. 124), respondent filed a bill to have the double indemnity and disability benefits rescinded and declared void because of fraud in the answers to the applications for the insurance. Three months previously, a claim for disability benefits was made by the insured (R. 5).

The question is whether the insurer can, after the contestable period has passed, deny its liability to pay these benefits because of false answers in the application. We contend it cannot because, by the incontestable clause, it covenanted not to attack the *validity* of the policy after two years from its date of issue and that the only matters embraced in the exceptions are non-payment of premium and matters relating to the provisions and conditions relating to the double indemnity and disability benefits, among which fraud in procuring the policy is not included.

We further contend that if upon one reading of the clause, the above seems to be its purport, and, upon

another reading, it lends itself to an argument that only one-half or one-third of it becomes incontestable or unassailable for alleged false answers in the application, after two years from date of issue, the first construction, favoring the insured, must upon familiar principles be accepted as the correct one.

In New York Life Ins. Co. v. Kaufman, 78 F. (2d) 398, (C. C. A. 9, cert. den. 296 U. S. 626) the Court, having before it an identical incontestable clause, so far as disability benefits are concerned, in a policy gotten up like the ones involved here, said (p. 404): "The ordinary man reading the clause would believe the provisions referred to were those included in the word 'Policy' at the beginning of the clause and not to the provisions in the application which is not mentioned," and held that it precluded a contest of the disability insurance for fraud in its procurement after the expiration of the period reserved in the policy for contest.

This Court, in Stroehmann v. Mutual Life Ins. Co., 300 U. S. 435, 81 Law Ed. 732, where a substantially similar incontestable clause was involved, held that no intent was shown to except disability benefits from the clause. The two clauses are as follows:

Stroehmann Case:

"Incontestability.—Except for non-payment of premiums and except for the restrictions and provisions applying to the Double Indemnity and Disability Benefits as provided in Sections 1 and 3 respectively, this Policy shall be incontestable af-

This case:

"Incontestability. — This policy shall be incontestable after two years from its date of issue except for nonpayment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits."

ter one year from its date of issue unless the Insured dies in such year, in which event it shall be incontestable after two years from its date of issue."

(In the Kaufman case, *supra*, the words "and Double Indemnity" were omitted. Otherwise, the clauses are identical.)

This Court said in the Stroehmann case:

"Examination of the words relied upon to show an exception to the incontestability clause of the policy discloses ample cause for doubt concerning their meaning. The arguments of counsel have emphasized the uncertainty. The District Court and the Circuit Court of Appeals reached different conclusions, and elsewhere there is diversity of opinion."

There is no *substantial* difference between the two incontestable clauses, set out in parallel columns above. Scientists tell us that no two snow flakes look alike under the microscope. Yet, to the average person, they do look substantially alike. So to the average person, the two clauses are substantially alike, aside from the period when they begin to operate. One has the exceptions at the beginning, the other has them at the end. The one uses the words "restrictions and provisions", the other, "provisions and conditions". The one uses the participle "applying", the other, "relating". The one uses the phrase "Double Indemnity and Disability Benefits as provided in Sections 1 and 3 respectively", the other, "Disability and Double Indemnity Benefits". The part which, in our opinion, is more important is *word for word* the same,—"this policy shall be incontestable" (Stroehmann case), "This policy shall be incontestable" (our case). These policies "sell" the idea that the policy, *as an entirety*, is incon-

testable, and so some of the courts have observed. The Mutual policy refers to the places where the restrictions and provisions applying to these benefits appear, by section numbers. The New York Life policy leaves the policy holder to find the places because it does not happen to have its provisions or sections numbered. The difference is not important.

The courts in the Kaufman case, *supra*, and in *Coddley v. New York Life Ins. Co.*, 70 P. (2d) 602, (Cal. Supreme Ct.), held the incontestable clauses of the Mutual Life Insurance Co. and the New York Life Insurance Co., set out above, to be substantially the same. The *policies*, as well as the incontestable clauses, are substantially alike. In the Stroehmann policy, the company agreed to pay the beneficiary a certain sum upon the death of the insured, or double that amount if his death resulted from accidental bodily injury, all upon conditions set forth in Sec. 1, and, if the insured is totally and presumably permanently disabled before age 60, to pay to the insured a certain sum monthly during such disability, with increases after five and ten years continued disability, besides waiving premium payments, all upon the conditions set forth in paragraph 3.

In this case, the company, using almost identical language, agreed to pay to the beneficiary a certain sum upon the death of the insured or double that amount if such death resulted from accident, as defined under "Double Indemnity", and subject to the provisions therein set forth, and if he is totally and presumably permanently disabled before age 60, to pay to the insured a certain sum each month and to waive premiums "as provided therein" (R. 8).

The difference is—and this is not material—the one policy concludes the provision relating to disability benefits with the phrase, “all upon the conditions set forth in Section 3”, and the other, with, “as provided therein”.

The provisions¹ setting out the terms and conditions upon which the double indemnity and disability benefits accrue are substantially the same. *This Court pointed out in the Stroehmann case that neither sections 1 or 3 contain anything relative to fraud in the policy or the effect of false statements in the application.* The same is true of the double indemnity and disability benefits provisions in our policies.

The incontestability clause in our policies, whether intentionally or not, is drawn in such a way as to induce the belief that the policy, *in its entirety*, is not to be contested after two years, except for such matters as ~~much~~^{must} occur in the future, failure of the insured to do those things which it is plain he must do, such as to pay premiums, furnish proof, submit to examination, the happening of certain things which are expressly excepted from the coverage, such as, voluntarily injuring himself, or injuries sustained while committing assaults, etc., etc. It directs the attention to the subject of prospective matters and takes the mind away from the idea that the insured will never have a wholly incontestable contract, by two things, *one*, by the intro-

¹The provisions and conditions are numerous and are segregated in a separate page of the policy which takes up about two and one half pages of the printed Record (9-12). Outside of the face page, the policy consists of five pages, aside from the copy of the application. The first is devoted entirely to the double indemnity and disability provisions and conditions and has a heavy border surrounding the page, the only one of the five pages having a border. The face page has a border but of a different type. A photostat of a policy (reduced) is attached to this brief.

duction, "This *policy* shall be incontestable", and, *two*, by listing as the *first* exception to incontestability, the failure to pay premium.

This method of drafting an incontestability clause is very aptly described by the Court in the Kaufman case, *supra*, as "put in and take out". The Court said (402) :

"The insurance company properly construes the policy portion of the entire contract to contain two completely separable insurance agreements—one against death and the other against total disability. It contends that the disability insurance as an entirety is made contestable for a fraudulent breach of provisions in the application by the italicized phrase in the following clause in the policy: '*Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability Benefits.*'

These two separate and entire insurances constitute the 'Policy'. Both were first placed in the incontestability clause by the use of the words 'This Policy shall be incontestable', and then, the company urges, the separate insurance against disability, *as an entirety*, is taken out of incontestability and restored to contest, by the phrase 'except as to provisions and conditions relating to Disability Benefits.'

On the argument, the company described the incontestability clause as a 'selling point' with the company's solicitors. This we accept as a fact, for the clause, after its period elapses, protects the insured's dependents against a contest for fraud claimed after his death, in which, if alive, he would be the principal witness. It also may protect the insured from such charge after his disability has weakened his memory and resistance and destroyed his power to earn his expenses of litigation. The courts have declared the clause available to the honest seeking its beneficence, despite the fact that it makes indefensible such

grossly reprehensible fraud as Kaufman admits. Wright v. Mutual Benefit Life Ass'n, 118 N. Y. 237, 23 N. E. 186, 187, 6 L. R. A. 731, 16 Am. St. Rep. 749; Murray v. State Mutual Life Ins. Co., 22 R. I. 524, 48 A. 800, 801, 53 L. R. A. 742; Mutual Life Ins. Co. v. Hurni Packing Co., 263 U. S. 167, 177, 44 S. Ct. 90, 68 L. Ed. 235, 31 A. L. R. 102.

On the company's solicitors pointing out this 'selling' clause to the ordinary man, he certainly would be mystified that such 'put in and take out' drafting of two completely independent insurances was necessary for the simple statement: 'The *life* insurance of this policy is incontestable after two years, except for non-payment of premiums'.

His natural inference would be that the disability insurance would not be mentioned in the incontestability clause unless something about disability was to be freed of contest.

Counsel strongly urged, in explanation of such drafting, that the court take judicial notice of a business rivalry between groups of life and accident companies in New York, in the process of which the incontestability clause was redrafted to its present form in aid of its warring solicitors. While the court has judicial knowledge of the New York statutes, it can know nothing, outside the record, of the company's business history as causing such draftmanship even if it were relevant to its interpretation. Much less can such knowledge be imputed to the ordinary man solicited to take the insurance."

The following cases support the contention of petitioner:

Stroehmann v. Mutual Life Ins. Co. of N. Y.,
300 U. S. 435, 81 L. Ed. 732;

Ness v. Mutual L. Ins. Co. of N. Y., 70 F. (2d) 59, (C. C. A. 4);

Mutual Life Ins. Co. of N. Y. v. Markowitz
et al., 78 F. (2d) 396 (C. C. A. 9), cert.
den. 296 U. S. 625;

New York Life Ins. Co. v. Truesdale, 79 F. (2d) 481, (C. C. A. 4);
New York Life Ins. Co. v. Kaufman, 78 F. (2d) 398, (C. C. A. 9), cert. den. 296 U. S. 626;
Horwitz *et ux.* v. New York Life Ins. Co., 80 F. (2d) 295 (C. C. A. 9);
New York Life Ins. Co. v. Yerys, 80 F. (2d) 264 (C. C. A. 4);
Thompson v. New York Life Ins. Co., 9 F. Supp. 248 (Dist. Ct. Okla); affirmed on other ground 78 F. (2d) 946 (C. C. A. 10);
Kiriakides v. Equitable Life Assur. Soc. of U. S., 177 S. E. 40 (Sup. Ct. S. C.);
Mutual Life Ins. Co. of N. Y. v. Margolis, 53 P. (2d) 1017, (Cal.);
Wilson v. Equitable Life Ins. Co., 262 N. W. 525 (Sup. Ct. Iowa);
Coodley v. New York Life Ins. Co., 70 P. (2d) 602;
New York Life Ins. Co. v. Thomas *et ux.*, 27 Dist. & County Reports (Pa.) 215 (Common Pleas Luzerne Co.)

In Coodley v. New York Life Ins. Co., 70 P. (2d) 602, where a clause and a policy similar to the one in the case at bar were involved, except that the policy did not include double indemnity benefits, the Court said:

"The validity and binding effect of an incontestable clause upon the parties to an insurance policy was sustained by this court in the case of Dibble v. Reliance Life Insurance Co., 170 Cal. 199. It was there held 'that a provision in a life insurance policy to the effect that after being in force the specified time, it shall be incontestable,

precludes any defense after the stipulated period on account of false statements warranted to be true, even though such statements were fraudulently made, unless by the terms of the policy fraud is expressly or impliedly excepted from the effect of such provision.¹ This rule seems to be universally accepted. (Encyclopedia of Law of Insurance (Couch), sec. 2155, p. 6961; Cooley's Briefs on Insurance, vol. 5, p. 4501 *et seq.*; Joyce on Insurance (2d ed.), vol. 5, pp. 6112 and 6113.)"

Then, after referring to the insured's contention, that the exception in the contestability clause "as to provisions and conditions relating to disability benefits" reserves only unto the insurance company the right to set up as defenses against any claims for disability benefits, the provisions and conditions set forth in the body of the policy, viz., on page headed "Total and Permanent Disability," and that fraud not being mentioned as a provision or condition under such heading, and not being excepted in the contestable clause itself, the insurer is barred and precluded by the contestable clause from contesting the policy on the ground of fraud in the application, says:

"The legal proposition involved in this cause has been the subject of many recent decisions of both our federal and state courts. We will briefly refer to those of the federal courts. The case of Ness v. Mutual Life Ins. Co. of New York, 70 Fed. (2d) 59, decided in 1934 by the Circuit Court of Appeals of the Fourth Circuit, construed an contestable clause in a life insurance policy substantially the same in legal effect as the clause now under discussion in the policy issued to the respondent. In the opinion in that action the court reviews the decisions of various courts that have had before them the question now before us. It will not be necessary to give in detail the rea-

¹Our policies have the "provisions and conditions" in the same way, on a separate page, similarly headed.

sons upon which the court based its conclusions nor to discuss the authorities upon which the decision is based. It is sufficient to state that the court upheld the contention of the insured that the incontestable clause precluded and debarred the insurance company in its action to have the policy rescinded from raising the question of the insured's fraud in the procurement of the policy. No petition for writ of certiorari to the Supreme Court of the United States was made in that action. That decision was followed by two from the Circuit Court of Appeals of the Ninth District, decided May 13, 1935. (New York Life Ins. Co. v. Kaufman, 78 Fed. (2d) 398, and Mutual Life Ins. Co. of New York v. Markowitz, 78 Fed. (2d) 396.) A petition to the Supreme Court to review the Kaufman case was denied. No such petition was made in the Markowitz case. Those cases were followed by three decisions of the Circuit Court of the United States, all contrary to the conclusions reached in the Ness, Kaufman and Markowitz cases. These later cases were Pyramid Life Ins. Co. v. Selkirk, 80 Fed. (2d) 553, decided January 3, 1936 (Fifth Circuit); Mutual Life Ins. Co. of New York v. Stroehmann, 86 Fed. (2d) 47, decided October 6, 1936 (Third Circuit) and Gatti v. New York Life Ins. Co. (not reported), decided October 6, 1936 (Third Circuit). No petition for review was made in the Selkirk case. A petition was made and granted in the Stroehmann case, and a rehearing was granted in the Gatti case. The Stroehmann case came on for hearing before the Supreme Court of the United States and a decision therein was rendered March 29, 1937 (Stroehmann v. Mutual Life Ins. Co. of New York, 57 Sup. Ct. Rep. 607), reversing the judgment of the Third Circuit Court of Appeals, and following the Ness, Kaufman and Markowitz cases. This decision of the Supreme Court appears to be predicated upon its conclusion that the incontestable clause was uncertain and that by the well-established rule governing the interpretation of insurance policies, this uncertainty must be construed in favor of the insured. The final para-

graph of the decision of the court reads as follows: 'Without difficulty respondent (the insurance company) could have expressed in plain words the exception for which it now contends. It has failed, we think, to do so, and applying the settled rule, the insured is entitled to the benefit of the resulting doubt.'

In view of these decisions of the federal courts, we think it unnecessary to review the cases from the state courts involving the construction of a clause like that contained in the policy issued to the respondent. They are not in entire harmony, but when considered with those from the federal courts, we think that the great weight of authority supports the position of the respondent in this action. We will, however, refer to one case from our own state, decided by the Third District Court of Appeal; being the only case to our knowledge in this state in which an uncontested clause similar to that contained in the policy issued to respondent has been construed. The case referred to is Mutual Life Ins. Co. v. Margolis, 11 Cal. App. (2d) 382. While the court in that case held that there was no ambiguity in such a clause, it further held that after the period of contestability had expired an uncontested clause precludes any defense that the provisions in the policy providing for disability benefits were procured by fraud, and precludes a contest of the policy on any grounds which are not specifically excepted in the clause itself.

The authorities cited herein, we think, without any question support the conclusion reached by the trial court. The judgment, therefore, is affirmed."

In New York Life Ins. Co. v. Thomas, 27 D & C 215, at page 218, the Court said with reference to the precise uncontested clause that we have in our case:

"Certainly within two years the insurer may defend as to death benefits, or as to double indemnity, or as to total disability, on fraud contained

in the application. After two years, where death benefits are sought, it appears to be conceded that fraud in the application no longer constitutes a defense. The purpose is to fix a time limit during which the insurer may investigate the truth or falsity of statements made in the application, precluding, after the passage of that time limitation, such defense, perhaps, after the insured has passed on and his mouth closed by death. This is a valuable asset in the policy, making it thereby the more salable by the insurer and assuring to the insured, after the passage of the limitation, contentment and the feeling of security for his beneficiaries.

From the standpoint of salability by the insurer and its acceptance by the insured, the same reasoning would apply as to double indemnity and as to permanent disability, unless the same is excepted by the contract itself.

The policy, as stated above, provides that the policy and the application constitutes the entire contract. Within the two years a defense may be made as to fraud in the application, because it is part of the policy, but the policy also provides that it shall, after two years, be incontestable except for nonpayment of premiums and except as to provisions and conditions relating to disability and double indemnity benefits. The language does not refer to the contract. The language specifically mentions the policy. The policy is the thing that is incontestable. But it still remains contestable in case of death as to failure to pay premiums and it also remains contestable insofar as there are provisions and conditions relating to double indemnity and disability benefits in the policy. This seems to be the rational interpretation of the clause written by the insurer, against whom, and not for whom, the same should be most favorably interpreted in case of ambiguity, if any exists, according to authority."

There are a number of cases involving the insurer's clause where the courts have said that it means what

the insurer claims it means.¹ This has "only emphasized the uncertainty." When they are read with the cases which support our construction, the confusion becomes "worse confounded."

The insured is just as much interested in a promise of contestability for the double indemnity and disability insurance as for the rest of the insurance. We do not dispute that a man may agree to take a policy which differentiates between the two kinds of insurance, in the matter of contestability, but the average man would not understand from the way respondent drafted its contestability clause that the double indemnity and disability benefits were outside of its protection. "Insured laymen," said the Court in *New York Life Ins. Co. v. Thomas (supra)*, "are not to be subjected to hair-splitting reasoning in construing a clause having the plain implication of that in the policy."

The provision that an insurance policy shall be incontestable after the expiration of the specified period means that thereafter, within the limits of the coverage, the policy shall stand, unaffected by any defense that it was invalid in its inception, or thereafter became invalid by reason of a condition broken.

"The real purpose of an incontestable clause is to prevent any defense which may be raised by the

¹The Circuit Court of Appeals said in its opinion that the Supreme Court of Pennsylvania has held as it holds on the question here involved, citing *Guise v. New York Life Ins. Co.*, 191 Atl. 626 (R. 41). The *Guise* case was decided by the Superior Court of Pennsylvania (127 Pa. Super. 127). The defense involved coverage—whether the disability occurred after the insurance became effective or before—and, in the case of one of the policies, whether, assuming the disability arose from bodily injuries or disease occurring before the policy became effective, this was known to the injured and not disclosed in the application. *Mayer v. Prudential Life Ins. Co.*, 121 Pa. Super. 475, the only case cited in the *Guise* opinion on that branch of the case was one of coverage, also.

insurance company against the validity of the policy, such as fraud, misrepresentation, and condition of health, arising in connection with the issuance of the policy; but as to such provisions and conditions as necessarily must relate to matters which arise after the issuance of a policy and which do not affect the validity of the policy itself, the incontestable clause has not been applied."

Mayer v. Prudential Life Ins. Co., 121 Pa. Super. 475.

Respondent attempted, below, to show fallacy in our contention by first calling attention to the purpose of an incontestable clause which is to bar a defense that the policy is void by reason of fraud in the procurement. Then it referred to our contention that the *second exception* was put in to assure to respondent the right to interpose, to a claim for double indemnity and disability benefits, the defense that the conditions imposing upon it a liability for such a claim, under the terms of the policy, have not been met or fulfilled. It then argued that the *second exception* must have been put in to mean something else which, it said, was the right to contest the validity of the policy for fraud.

However, to make that point, it had to ignore the existence of the *first exception* in its incontestable clause which is a reservation of the right to contest the policy for nonpayment of premium. That, also, is prospective. Since, as it says, "an incontestability clause was never intended to apply to defenses that might accrue or events that might happen after the policy was issued," why did it, by its *first exception*, save to itself a defense for an event that might happen after the policy was issued, namely, default in payment of premium?

Moreover, by the Act of May 17th, 1921, sec. 410, P. L. 682, Art. IV (40 P. S. sec. 510), in force at the time these policies were issued, it is provided: "No policy of life * * * insurance, * * * shall be issued or delivered * * * unless it contains in substance the following provision: * * * (c) a provision that the policy shall be incontestable after it has been in force, during the lifetime of the insured, two years from its date of issue, except for non-payment of premiums, and for engaging in military or naval service in time of war, without the consent in writing of an executive officer of the company." It will hardly be claimed that a legislative agent of policy holders took any hand in drafting the provisions for life insurance policies. Of course, it is the insurance company's agents that watch legislation affecting their business and do all they can to have their interests taken care of. Here, again, we have prospective matters, a number of them, put into an incontestability clause which has, or *should have*, nothing to do with such matters.¹

Respondent cannot plead that it inserted the first exception because of the mandate of the statute. The only thing that was mandatory was the incontestability clause, but not the exceptions, and, as a matter of fact, it did not consider the exceptions mandatory for it omitted the second one, referring to engaging in military or naval service. However that may be, we have shown that regardless of the fact that "an incontestability clause was never intended to apply to

¹The probability is that the form of the incontestable clause, substantially in the language that the policy shall be incontestable after a certain period except for nonpayment of premium, was first drafted by the insurance companies when there was no statute requiring its inclusion in policies and that it was adopted in the statutes when legislatures determined they had a right to legislate on the subject of life insurance.

defenses that might accrue or events that might happen after the policy was issued," respondent and the draughtsman of the clause in the above statute misunderstood the true function of such a clause by excepting from its operation things upon which it would not operate, anyhow, unless that action was due to the conflict in the decisions upon the operation of an incontestability clause, referred to later herein.¹ The average person cannot be blamed for believing that the exceptions in the incontestability clause refer to things of the future when insurance companies and legislatures put such things in as exceptions to such a clause.

"Condition": Something to be done; something established as a requisite to the doing or taking effect of something else; an agreement or stipulation in regard to some uncertain future event, but annexed to it by the parties providing for a change or modification of their legal relation upon its occurrence; a clause in an agreement which has for its object to suspend, rescind, or modify the principal obligation; * * * that which limits or modifies the existence or character of something; a restriction or qualification.

12 C. J. 399 (citing cases).

Funk & Wagnalls Practical Standard Dictionary defines the word:

"An event, fact or the like that is necessary to the occurrence of some other, though not its cause; a prerequisite."

The legal and popular meanings of the word are the same and they indicate the future. The word "provisions," used as it is in the clause, coupled closely with "conditions," gives the idea of a synonym. If "provisions" meant false answers in the application, and reserved the defense of fraud, there was no necessity of going further and inserting "conditions."

Respondent says that to test the soundness of our contention, it will begin by asking a few questions: "If the second exception were not in the incontestability clause, could it be held that the company would be estopped, after two years from the date of issue of the policy, from raising any defense against a claim for disability benefits or double indemnity? If the second exception were not in the incontestability clause, could it be held that the company was liable for disability benefits, without being given the opportunity to prove that the insured was not disabled? If the second exception were not in the incontestability clause, could it be held that the company was liable for double the face of the policy, without being given a chance to prove that the death was not accidental?"

We will test the soundness of respondent's contention by asking a few similar questions. If the first exception were not in the incontestability clause, could it be held that the company would be estopped, after two years from the date of the issuance of the policy, from raising a defense against a claim for such benefits that the premiums had not been paid? If the first exception were not in the incontestability clause, could it be held that the company was liable for disability benefits without being given the opportunity to prove that the insured had not paid the premiums?

The basis of respondent's argument that it could not possibly have meant, by its second exception, what we contend it meant, is disposed of by the Court in the case of *New York Life Ins. Co. v. Kaufman* (*supra*, p. 403): "It is more rational to suppose that the contestability clause which the excepting phrases saves is as to the satisfaction of the conditioning requirements,

even if prior decisions of the courts have held such precaution unnecessary." But many other decisions make such precaution wise.

"The purpose of the second exception in the incontestability clause was to make clear that, notwithstanding the provisions of that clause, the company reserved the right to rely upon the restrictions and provisions contained in sections 1 and 3. Thus the right was reserved to contest, under section 1, liability for double indemnity in case of suicide or death resulting from military or naval service or from engaging in felony. And the right was reserved to contest, under section 3, claims for disability where due proofs had not been furnished, or where upon request of the company proofs of the continuance of the disability had been refused, or where the disability resulted from self-inflicted injury or from military or naval service beyond the continental limits of the United States and Canada. Under some recent decisions defenses under clauses such as those contained in sections 1 and 3 are held not to be precluded by the incontestability clause. See Scales v. Jefferson Standard Life Ins. Co., 155 Tenn. 412, 295 S. W. 58, 55 A. L. R. 537, and note, and Wright v. Philadelphia Life Ins. Co. (D. C.) 25 F. (2d) 514, and cases there cited. *But in many jurisdictions it is held that the incontestability clause does preclude a defense based upon such provisions.* See notes in 55 A. L. R. 549 and 67 A. L. R. 1364. *It was evidently to guard against a construction of the policy holding that the defenses reserved in sections 1 and 3 were precluded by the incontestability clause, that the second exception in that clause was inserted.*" (Italics ours.)

Ness v. Mutual Life Ins. Co. of N. Y., 70 F. (2d) 59 (C. C. A. 4).

It is thus clear that the courts have not agreed on the distinction between matters of coverage and the matter of the validity of the policy. And this confusion

has been the cause of considerable conflict with respect to the operation of the incontestability clause.

Vance on Insurance, page 821, shows this conflict:

"If the defense which the insurer seeks to set up is reserved to the insurer by the terms of the incontestable clause itself, obviously the clause will not bar the insurer's right to avail himself of this defense. In many cases the clause itself provides that it shall not be applicable to such defenses as fraud, or suicide. But difficulty comes with those cases where an attempt is made in the policy to exclude the risk, but not in the incontestable clause. The question whether the incontestable clause overrides the attempted exclusion in the policy has been made to depend on whether the exclusion was by a technical exception, or merely by a condition, the breach of which would enable the insurer to terminate his liability. The incontestable clause should be construed merely as an agreement on the part of the insurer not to contest the validity of the policy as written. On principle, it should not operate to prevent the defense of an action, even after the expiration of the contestable period, on the ground that the loss was not covered because excepted under the terms of the policy. This distinction between risks expressly excepted from the coverage of the policy, and mere conditions in the policy giving to the insurer the power of terminating his liability thereon, has been recognized in several jurisdictions. Thus where the policy expressly excepted the risk of death by suicide within one year, the insurer need not make a contest within the designated contest period in order to defend on the ground that the insured took his own life within the year. However, many courts have failed to distinguish between such excepted risks, and mere conditions in the policy, holding that in either event such defense is barred to the insurer unless asserted within the contest period. Thus even though the policy provided that 'self-destruction, sane or insane, within one year from the date of this policy is a

risk not assumed by the company under this policy,' it has been held that the privilege of defending after the time limit for contest, on the ground that the insured committed suicide within the year, was barred.

"It seems to be uniformly held that where the defense sought to be raised is a mere condition, not contained in the incontestable clause, it will be barred if not asserted within the contestable period. Thus where the policy provides that it will be avoided if the insured commits suicide within a year, the insurer must institute his contest within the time fixed by the incontestable clause. Likewise the incontestable clause has been held to preclude the insurer from showing in defense that the insured came to his death in consequence of a violation of the law, contrary to a policy condition; or by execution for crime."

It is reasonable to conclude that respondent, knowing of the diversity of decisions, and anticipating that it might be sued in a jurisdiction which holds that the incontestable clause bars defenses for future occurrences—non-fulfillment of the provisions and conditions in the policy that deal with matters of coverage—drew the second, as well as the first, exception to incontestability so as to save to itself such defenses.

Respectfully submitted,

CHARLES J. MARGIOTTI,

CHARLES H. SACHS,

Counsel for Petitioners.

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NEW YORK LIFE INSURANCE COMPANY

AN MUTUAL COMPANY

AGREES TO PAY

to JESSIE S., WIFE OF THE INSURED, ***

Beneficiary

(with right on the part of the Insured to change the Beneficiary in the manner provided herein)

*** THIRTY THOUSAND ***
THE FACE OF THIS POLICY

Dollars

upon receipt of due proof of the death of

*** JOHN G. RUBIN ***

the Insured.

or

*** TWENTY THOUSAND ***
(DOUBLE THE FACE OF THIS POLICY)

Dollars

if such death resulted from accident as defined under "Double Indemnity" and subject to the provisions therein set forth.

And upon receipt of due proof that the Insured is totally and presumably permanently disabled before age 60, as defined under "Total and Permanent Disability".

THE COMPANY AGREES TO PAY TO THE INSURED

*** ONE HUNDRED ***

Dollars

each month, and to waive payment of premiums, as provided herein.

This contract is made in consideration of the application therefor and of the payment in advance of the sum of \$ 200.00, the receipt of which is hereby acknowledged, constituting the first premium and maintaining this Policy for the period terminating on the Twenty-Eighth day of May Nineteen Hundred and Twenty-Nine, and of a like sum on said date and every Six calendar months thereafter during the life of the Insured.

(The above premium includes \$.20 for the Double Indemnity Benefit and \$ 19.80 for the Disability Benefits.)

The premium paying period may be shortened by application of dividend additions and dividend deposits as provided herein.

This Policy takes effect as of the Twenty-Eighth day of November, Nineteen Hundred and Twenty-Eight, which day is the anniversary of the Policy.

THE BENEFITS AND PROVISIONS printed or written by the Company on the following pages are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In witness whereof the NEW YORK LIFE INSURANCE COMPANY has caused this contract to be signed this FIRST day of December, Nineteen Hundred and Twenty-Eight.

Frederick M. Johnson
Secretary

John C. Cullen
President

52A-3
O.L.
D.D.I.

Age 42

Registrar

Examined ✓ Insurance Payable at Death. Premiums Payable during Life unless Dividends Applied to Shorten Premium Paying Period. Disability Benefits. Double Indemnity for Fatal Accident. Annual Participation in Surplus.

EXPIRES "A"

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DOUBLE INDEMNITY

The Double Indemnity provided on the first page hereof shall be payable upon receipt of due proof that the death of the Insured resulted directly and independently of all other causes from bodily injury effected solely through external, violent and accidental means and occurred within ninety days after such injury.

Double Indemnity shall not be payable if the Insured's death resulted from self-destruction, whether sane or insane, from the taking of poison or inhaling of gas, whether voluntary or otherwise; from committing an assault or felony, from war or any act incident thereto; from engaging in or instigating insurrection, from participation as a passenger or otherwise in a riot or aeromobile, or directly or indirectly from infirmity of mind or body, from illness or disease, or from any bacterial infection other than bacterial infection occurring in consequence of accidental and external bodily injury. The Company shall have the right and opportunity to examine the body, and to make an autopsy unless prohibited by law.

Double Indemnity shall not apply to the Temporary Insurance or to the Paid-up Insurance provided herein under "Surrender Values", or to any Dividend Additions provided under "Participation in Surplus - Dividends".

Upon written request of the Insured on any anniversary of this Policy and upon return of this Policy for proper endorsement, the Company will terminate this provision and thereafter the premium shall be reduced by the amount charged for the Double Indemnity Benefit.

TOTAL AND PERMANENT DISABILITY

Disability shall be considered total whenever the Insured is so disabled by bodily injury or disease that he is wholly prevented from performing any work, from following any occupation, or from engaging in any business for remuneration or profit, provided such disability occurred after the insurance under this Policy took effect and before the anniversary of the Policy on which the Insured's age at nearest birthday is sixty.

Upon receipt at the Company's Home Office, before default in payment of premium, of due proof that the Insured is totally disabled as above defined, and will be continuously so totally disabled for life, or if the proof submitted is not conclusive as to the permanency of such disability, but establishes that the Insured is, and for a period of not less than three consecutive months immediately preceding receipt of proof has been, totally disabled as above defined, the following benefits will be granted:

(a) **Waiver of Premium.** The Company will waive the payment of any premium falling due during the period of continuous total disability (the premium waived to be the annual, semi-annual or quarterly premium according to the mode of payment in effect when disability occurred).

(b) **Income Payments.** The Company will pay to the Insured the monthly income stated on the first page hereof (\$10 per \$1,000 of the face of this Policy) for each completed month from the commencement of and during the period of continuous total disability. If disability results from insanity, payment will be made to the beneficiary in lieu of the Insured.

In event of default in payment of premium after the Insured has become totally disabled as above defined, the Policy will be restored and the benefits shall be the same as if said default had not occurred, provided due proof that the Insured is and has been continuously from date of default so totally disabled and that such disability will continue for life or has continued for a period of not less than three consecutive months, is received by the Company not later than six months after said default.

The total and irrecoverable loss of the sight of both eyes or of the use of both hands or of both feet or of one hand and one foot shall constitute total disability for life.

Before making any income payment or waiving any premium, the Company may demand due proof of the continuance of total disability, but such proof will not be required oftener than once a year after such disability has continued for two full years. Upon failure to furnish such proof, or if the Insured performs any work, or follows any occupation or engages in any business for remuneration or profit, no further income payments shall be made nor premiums waived.

The sum payable in any settlement of the Policy shall not be reduced by income payments made nor by premiums waived under the above provisions. Dividends, loan and surrender values shall be the same as if the waived premiums had been duly paid. Any disability benefit due but unpaid at the time of the Insured's death shall be payable to the person entitled to the proceeds of the Policy.

Disability Benefits shall not apply if the disability of the Insured shall result from self-inflicted injury, or from military or naval service in time of war, nor shall these benefits apply to the Temporary Insurance or to the Paid-up Insurance provided herein under "Surrender Values", or to any Dividend Additions provided under "Participation in Surplus - Dividends".

Any premium due on or after the anniversary of the Policy on which the age of the Insured at nearest birthday is sixty will be reduced by the amount of premium charged for Disability Benefits. Upon written request of the Insured on any anniversary of this Policy and upon return of this Policy for proper endorsement, the Company will terminate this provision and thereafter the premium shall be reduced by the amount charged for Disability Benefits.

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PARTICIPATION IN SURPLUS—DIVIDENDS

The proportion of dividend surplus upon this Policy shall be ascertained annually. Beginning at the end of the second insurance year, and on each anniversary thereafter, such surplus as shall have been apportioned by the Company to the Policy shall at the option of the Insured be either:

- (a) Paid in cash or
- (b) Applied toward payment of premiums; or
- (c) Applied to purchase a participating policy addition to the sum insured (herein referred to as Dividend Additions), or

(d) Left to accumulate at such rate of interest as the Company may declare on funds so held, but at a rate not less than three per cent compounded and credited annually. Such accumulated dividends (herein referred to as Dividend Deposits) may be withdrawn in cash by the Insured on any anniversary of the Policy or shall be payable at the maturity of the Policy to the person entitled to its proceeds.

If no option is selected, the dividend will be applied to the purchase of a dividend addition to the sum insured. The Insured may surrender any dividend addition for cash at any time not later than three months after any default in the payment of premium, and the cash value thereof shall never be less than the original cash dividend.

DIVIDENDS MAY BE APPLIED TO DECREASE NUMBER OF PREMIUM PAYMENTS OR MATURE POLICY AS AN ENDOWMENT

Whenever the cash value of the Policy, including the cash value of any dividend additions and dividend deposits shall equal the net single premium at the attained age of the Insured for a fully paid participating Policy of the same kind and amount as this Policy, calculated on the same basis as the premium on this Policy, the Company, upon written request of the Insured, will endorse the Policy as fully paid, whereupon the payment of premium will be discontinued; or, whenever said cash value shall equal the face amount of this Policy, the Company, upon due surrender of the Policy, will pay the face amount of the Policy in cash, less any indebtedness to the Company.

MISCELLANEOUS BENEFITS

Assignment. Any assignment of this Policy must be made in duplicate and one copy filed with the Company at its Home Office. The Company assumes no responsibility for the validity of any assignment.

Change of Beneficiary. The Insured may from time to time change the beneficiary, otherwise provided by endorsement on this Policy or under the existing assignment of this Policy. Any change so made must be made by written notice to the Home Office of this company accompanying the Policy for endorsement of the change thereon by the Company. Such endorsement of the change shall not be made. After such endorsement, the change will relate back to and take effect as of the date the Insured made written notice of change to the Company, provided at the time of such endorsement or not, but without prejudice to the Company's right of six per cent interest before receipt of such written notice at its Home Office. In the event of the death of any beneficiary before the date of the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

Grace. If any premium is not paid on or before the day it falls due the policy holder in default, but a grace of one month (not less than thirty days) will be allowed for the payment of every premium after the first, during which time the insurance continues in force. If death occurs within the period of grace the overdue premium will be deducted from the amount payable hereunder.

Interest Allowed at Settlement of Death Claims. Interest will be allowed on the proceeds of the Policy payable as a death benefit from the receipt of the proof of death at any office of the Company until the date settlement is made at the Home Office. Interest shall be at the rate declared by the Company on such funds, but at a rate not less than three per cent per annum.

Reinstatement. This Policy may be reinstated at any time within five years after any default, upon written application by the Insured and presentation at the Home Office of evidence of insurability satisfactory to the Company and upon payment of overdue premiums with six per cent interest thereon from their due date. Any indebtedness to the company at date of default must be paid or reinstated with interest thereon in accordance with the loan provisions of the Policy.

Privilege of Change to Other Plans of Insurance. At any time before default in payment of premium, provided the Insured is then less than 30 years of age and has not become disabled under this disability provision hereof, the Insured may, without medical re-examination, exchange this Policy for a Policy having a plan of insurance having a higher rate of premium issued by the Company at the time the Policy was issued for the same amount of this Policy and containing the same Disability and Double Indemnity Benefits. Such exchange shall be effective upon cancellation of this Policy and the payment of the difference in premiums with compound interest at the rate of six per cent per annum from the due date of each premium to the date of exchange. Allowance will be made for any larger cash dividends on the new plan. The new Policy will take effect as of the date of this Policy and the premium will be at the rate which would have been charged if the Policy had been originally issued on the new plan.

Residence, Travel and Occupation. This Policy is free of conditions as to residence, travel, occupation and military or naval service, except as provided herein under Disability and Double Indemnity Benefits.

Rights of Insured. The Insured, during his lifetime, and without the consent of the beneficiary, may receive every benefit, exercise every right and enjoy every privilege conferred upon the Insured by this Policy, unless otherwise provided by endorsement hereon.

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OPTIONAL METHODS OF SETTLEMENT

The Insured, or in case the Insured shall not have done so, the beneficiary after the Insured's death, may, by written notice to the Company at its Home Office, make the proceeds of this Policy, in whole or in part, payable under one of the following options. Any such election or change in election shall not take effect until endorsed on the Policy by the Company at its Home Office. The following methods of settlement are available whether such proceeds are payable as a death claim or on maturity as an endowment or upon surrender of the Policy for its cash value, provided the instalment or interest payment to any payee is not less than \$10.

Option 1. The proceeds in whole or in part may be left with the Company subject to withdrawal at any time on demand in sums of not less than \$100 or one hundred dollars. The Company will credit interest annually on the proceeds so left with it at such rate as it may, each year, declare on such funds, and guarantees that the rate shall be not less than three per cent.

Option 2. The proceeds in whole or in part may be made payable in equal annual, semi-annual, quarterly or monthly instalments for a fixed period as may be agreed upon, in accordance with the following table.

Option 3. The proceeds in whole or in part may be made payable in equal annual, semi-annual, quarterly or monthly instalments for a fixed period of ten or twenty years as may be agreed upon, and for the remaining life-time of the payee, in accordance with the following table.

Option 4. The proceeds in whole or in part may be left with the Company at interest until the death of the payee. The Company will pay interest thereon annually, semi-annually, quarterly or monthly, as may be agreed upon, at such rate as the Company may declare each year on such funds, and guarantees that the interest per one thousand dollars of the proceeds shall be not less than \$1.07 when paid annually, \$14.80 when paid semi-annually, \$7.42 when paid quarterly, or \$1.47 when paid monthly.

Option 5. The proceeds in whole or in part may be left with the Company at interest and paid in equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the entire proceeds left with the Company, including interest thereon as provided in Option 4, have been paid, provided that the fixed amount payable each year shall be not less than five per cent of the original proceeds left with the Company.

The first instalment under Options 2 and 3 will be payable on the date when the proceeds of the Policy become due and the instalment payment on each anniversary of the first payment will be increased by such additional interest, in excess of three per cent per annum, as the Company may declare on such funds for that year. The additional interest under Option 2 will be calculated on the unpaid instalments, commuted at three per cent per annum, and under Option 3 on the unpaid instalment for the fixed period selected, commuted at three per cent per annum.

When the proceeds of the Policy become payable the Company will deliver to each payee a certificate evidencing the rights and benefits of such payee under the option selected.

At the election of any payee any unpaid sum left with the Company under Options 1, 4 or 5 with accrued interest to date of payment, or the commuted value at three per cent of any unpaid instalments under Option 2, or the commuted value at three per cent of any unpaid instalments for the fixed period selected under Option 3, will be paid in one sum to the executors or administrators of the payee, unless otherwise agreed in writing.

Unless otherwise directed in writing by the Insured, the benefits under the above options shall not be transferable nor subject to commutation or in consequence during the lifetime of the payee.

MONTHLY AND ANNUAL PAYMENTS FOR EACH \$1,000 OF PROCEEDS OF POLICY

The semi-annual or quarterly instalments are 50.37% and 25.28% respectively of the annual instalment under Option 2, and not less than these respective percentages under Options 3.

OPTION 2			OPTION 3 - LIFE INCOME TO PAYEE WITH INCOME GUARANTEED FOR													
Age of Payee at Date When Proceeds Available	5 Years Certain	10 Years Certain	20 Years Certain	Age of Payee at Date When Proceeds Available	5 Years Certain	10 Years Certain	20 Years Certain	Age of Payee at Date When Proceeds Available	5 Years Certain	10 Years Certain	20 Years Certain	Age of Payee at Date When Proceeds Available	5 Years Certain	10 Years Certain		
2	\$15.76	\$10.49	10.49	3	\$1.81	\$44.83	\$7.73	11.21	\$5.58	\$42.20	48	\$25.36	\$62.61	\$5.17	\$60.51	\$54.20
3	25.93	14.95	11.21	4	\$1.83	\$45.25	\$7.75	11.21	\$5.59	\$42.36	5	\$4.45	\$63.63	\$5.24	\$61.40	\$46.71
4	35.66	21.19	12	5	\$1.84	\$45.54	\$7.79	11.21	\$5.61	\$42.54	50	\$5.54	\$64.20	\$5.32	\$62.33	\$46.72
5	45.30	21.99	13	6	\$1.87	\$45.84	\$8.81	14.84	\$6.62	\$42.71	51	\$5.64	\$65.83	\$5.41	\$63.80	\$47.77
6	55.14	22.72	14	7	\$1.89	\$46.78	\$8.83	15.07	\$6.64	\$42.90	52	\$5.74	\$67.02	\$5.49	\$64.30	\$47.80
7	65.16	23.53	15	8	\$1.91	\$46.05	\$8.85	15.29	\$6.65	\$43.08	53	\$5.85	\$68.26	\$5.58	\$65.35	\$48.84
8	75.68	24.30	16	9	\$1.94	\$46.27	\$8.87	15.53	\$6.67	\$43.27	54	\$5.97	\$69.57	\$5.68	\$66.44	\$48.57
9	85.53	24.69	17	10	\$1.96	\$46.52	\$8.89	15.76	\$6.69	\$43.47	55	\$6.09	\$70.95	\$5.78	\$67.57	\$49.90
10	95.61	25.11	18	11	\$1.98	\$46.77	\$8.91	15.99	\$6.70	\$43.66	56	\$6.22	\$72.40	\$5.88	\$68.75	\$50.45
11	105.92	25.50	19	12	\$2.00	\$47.02	\$8.93	16.22	\$6.72	\$43.87	57	\$6.35	\$73.93	\$5.98	\$69.98	\$50.95
12	116.44	25.81	20	13	\$2.02	\$47.28	\$8.95	16.45	\$6.74	\$44.07	58	\$6.49	\$75.53	\$6.09	\$71.24	\$51.46
13	126.11	26.09	21	14	\$2.04	\$47.53	\$8.97	16.74	\$6.76	\$44.29	59	\$6.64	\$77.22	\$6.21	\$72.50	\$52.00
14	135.97	26.34	22	15	\$2.07	\$47.84	\$4.00	17.01	\$6.78	\$44.52	60	\$6.80	\$78.99	\$6.32	\$73.91	\$52.45
15	145.97	26.59	23	16	\$2.10	\$48.13	\$4.02	17.29	\$6.80	\$44.75	61	\$6.96	\$80.85	\$6.44	\$75.31	\$53.42
16	155.14	26.80	24	17	\$2.12	\$48.45	\$4.05	17.59	\$6.82	\$45.00	62	\$7.13	\$82.81	\$6.57	\$76.78	\$54.20
17	164.44	27.01	25	18	\$2.15	\$48.77	\$4.07	17.90	\$6.84	\$45.25	63	\$7.31	\$84.87	\$6.70	\$78.84	\$54.80
18	173.86	27.20	26	19	\$2.18	\$49.12	\$4.10	18.22	\$6.86	\$45.51	64	\$7.51	\$87.03	\$6.83	\$80.28	\$55.21
19	183.37	27.38	27	20	\$2.21	\$49.47	\$4.13	18.56	\$6.89	\$45.79	65	\$7.71	\$89.31	\$6.96	\$81.50	\$55.63
20	192.98	27.55	28	21	\$2.24	\$49.81	\$4.16	18.91	\$6.91	\$46.07	66	\$7.92	\$91.69	\$7.09	\$82.89	\$56.04
21	202.71	27.71	29	22	\$2.28	\$49.24	\$4.19	19.28	\$6.94	\$46.37	67	\$8.15	\$94.19	\$7.23	\$84.30	\$56.55
22	212.54	27.86	30	23	\$2.31	\$49.68	\$4.23	19.66	\$6.96	\$46.67	68	\$8.37	\$96.81	\$7.37	\$86.14	\$56.97
23	222.47	28.01	31	24	\$2.34	\$49.08	\$4.26	20.07	\$6.99	\$46.99	69	\$8.61	\$99.56	\$7.51	\$87.59	\$57.40
24	232.47	28.17	32	25	\$2.38	\$49.43	\$4.30	20.49	\$4.02	\$47.32	70	\$8.86	\$102.45	\$7.65	\$89.46	\$57.88
25	242.54	28.33	33	26	\$2.43	\$49.79	\$4.33	20.93	\$4.05	\$47.66	71	\$9.15	\$105.44	\$7.79	\$91.12	\$58.44
26	252.67	28.49	34	27	\$2.48	\$50.24	\$4.37	21.39	\$4.08	\$48.01	72	\$9.40	\$108.57	\$7.94	\$92.74	\$58.45
27	262.87	28.62	35	28	\$2.52	\$50.62	\$4.42	21.87	\$4.11	\$48.38	73	\$9.69	\$111.84	\$8.07	\$94.44	\$58.47
28	273.17	28.76	36	29	\$2.56	\$50.98	\$4.46	22.36	\$4.14	\$48.75	74	\$9.99	\$115.25	\$8.21	\$96.06	\$58.48
29	283.57	28.97	37	30	\$2.60	\$51.33	\$4.51	22.80	\$4.17	\$49.14	75	\$10.30	\$118.78	\$8.34	\$97.65	\$58.88
30	293.98	29.18	38	31	\$2.64	\$51.68	\$4.55	23.24	\$4.21	\$49.54	76	\$10.62	\$122.44	\$8.47	\$99.21	\$59.44
			32	33	\$2.68	\$52.03	\$4.60	23.68	\$4.24	\$49.96	77	\$10.95	\$126.22	\$8.59	\$100.71	\$59.85
			34	35	\$2.78	\$56.02	\$4.63	24.63	\$4.28	\$50.38	78	\$11.29	\$130.15	\$8.71	\$102.14	\$59.11
			36	37	\$2.84	\$56.73	\$4.71	25.26	\$4.32	\$50.82	79	\$11.64	\$134.14	\$8.82	\$104.31	\$59.56
			38	39	\$2.90	\$57.43	\$4.77	25.91	\$4.35	\$51.27	80	\$12.00	\$138.25	\$8.92	\$104.80	\$59.18
			40	41	\$2.96	\$58.19	\$4.83	26.66	\$4.39	\$51.75	81	\$12.36	\$142.44	\$9.02	\$106.91	\$59.21
			42	43	\$3.04	\$58.99	\$4.89	27.31	\$4.43	\$52.20	82	\$12.73	\$146.70	\$9.11	\$107.12	\$59.23
			44	45	\$3.12	\$59.83	\$4.93	28.06	\$4.48	\$52.69	83	\$13.09	\$151.00	\$9.19	\$108.14	\$59.51
			46	47	\$3.19	\$60.71	\$5.02	28.84	\$4.52	\$53.18	84	\$13.46	\$155.34	\$9.26	\$109.06	\$59.51
			48	49	\$3.27	\$61.64	\$5.07	29.66	\$4.56	\$53.69	85	\$13.83	\$159.27	\$9.32	\$109.89	\$59.51
			50	51	\$3.35	\$62.60	\$5.14	30.50	\$4.61	\$54.20						

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GUARANTEED LOAN AND SURRENDER VALUES

LOANS. After three full years premiums have been paid and before default in the payment of premium, the Company, upon receipt of this Policy and a loan agreement satisfactory to the Company, will advance to the Insured on the sole security of this Policy any amount which, with interest, shall be within the limit of the Cash Surrender Value of this Policy. Interest on the loan will be at the rate of six per cent per annum payable annually on the anniversary of the Policy. Any existing indebtedness to the Company on this Policy, including accrued interest thereon, will be deducted from the amount of said loan. Interest is not paid when due it shall be added to the principal. All or any part of the indebtedness may be repaid at any time while the Policy is in force. Failure to repay such indebtedness or to pay interest will not void the Policy, but whenever the amount of the total indebtedness equals the Cash Surrender Value the Policy shall become void one month after the Company shall have mailed notice to the Insured of the absence of dividend money.

SURRENDER VALUES. In event of default in payment of premiums after three full years' premiums have been paid, the following benefits shall apply:

(a) **Temporary Insurance.** Insurance for the face of the Policy, plus any dividend additions and any dividend deposits and less the amount of any indebtedness thereon, shall, upon expiry of the period of grace, be continued automatically as Temporary Insurance as from the date of default for such term as the Cash Surrender Value less any indebtedness thereon will yet have as a net single premium at the attained age of the Insured, according to the American experience table of mortality and interest at 3 percent. This Temporary Insurance will be without participation in surplus.

(b) **Participating Paid-up Insurance.** Within three months after such default, but not later, the Insured may surrender this Policy and elect in place of such Temporary Insurance to have this Policy endorsed for the amount of Participating Paid-up Insurance which the Cash Surrender Value at date of default less any indebtedness thereon, will purchase as a single premium at the attained age of the Insured at the date of default according to the American experience table of mortality and interest at 3 percent. The Insured may obtain a loan on such Paid-up Insurance or surrender it within one month after any anniversary for its cash surrender value.

(c) **Cash Surrender Value.** If this Policy shall not have been endorsed for Participating Paid-up Insurance, the Insured, within three months after such default, but not later, may surrender this Policy and all claims thereunder, and receive its Cash Surrender Value as at date of default less any indebtedness thereon. The Cash Surrender Value shall be the reserve on the face amount of the Policy at date of default, omitting fractions of a dollar per thousand of insurance, and the reserve equally offsetting dividend additions and any outstanding dividend deposits, and less a surrender charge for the third of the ninth years, inclusive of, of five more than one and one half percent of the face of the Policy. The above shall be computed on the basis of the American experience table of mortality and interest at 3 percent.

CASH SURRENDER VALUE OF FULLY PAID POLICY. If this Policy shall have become fully paid by its terms, the Insured may surrender the Policy and all claims thereunder within one month after any anniversary of the policy and receive its cash surrender value less any indebtedness thereon. Such cash surrender value shall be computed on the basis described under (c) above.

The values in the Table of Guaranteed Loan and Surrender Values are computed in accordance with the above provisions, on the basis of \$1,000 face amount, assuming that premiums have been paid for the first 30 years of the Policy if there is no new premium to the Company, that there are no outstanding dividend additions nor dividend deposits, and after deduction of the surrender charge, if any.

TABLE OF GUARANTEED LOAN AND SURRENDER VALUES.

Years	\$1,000 Face Amount	\$1,000 Face Amount	\$1,000 Face Amount	\$1,000 Face Amount
3	\$43	\$86	\$3	748
4	59	116	5	918
5	80	154	6	1,096
6	100	188	7	1,280
7	122	223	8	1,471
8	144	261	9	1,669
9	167	297	10	1,864
10	190	332	11	2,057
11	211	361	12	2,249
12	233	390	13	2,440
13	254	418	14	2,630
14	275	446	15	2,819
15	295	471	16	3,007
17	341	539	18	3,571
19	384	585	20	4,125
21	428	631	22	4,677
23	471	677	24	5,228
25	512	723	26	5,778

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The Loan and/or the end of any year may be secured during that year less interest on the premium for the entire year from a paid-in value.

Values for less than one year will be computed on the same basis as will be furnished on request.

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TERM INSURANCE IN CASE OF LOAN

Any loan under this Policy may be covered by term insurance as follows:

1. The Insured may furnish evidence of insurability or otherwise to the Company.
 2. If the Insured fails to furnish such evidence or fails to pay the premium as required by the attached schedule, the Insurance at the time the term premium is due shall be discontinued.
 3. If the Insured fails to furnish evidence of insurability or fails to pay the premium as required by the attached schedule, the Insurance at the time the term premium is due shall be discontinued. No term insurance shall be reinstated or renewed after one year from the date of discontinuance.
 4. If the term insurance is discontinued, it shall be reduced to one-half of its original amount in accordance with the terms of the attached schedule. The term insurance so reduced will automatically be reinstated and renewed accordingly and any unattached premium paid therefor will be applied to the reinstated term insurance.

5. This insurance takes effect upon delivery to the Insured of the company's Policy therefor. The sum payable as term insurance shall be limited to the amount of the indebtedness.

PREMIUMS FOR FAILURES OF TERM INSURANCE							
16	\$1.75	28	\$1.26	41	\$0.95	74	\$1.47
18	1.76	29	1.27	43	1.07	75	1.79
20	1.78	30	1.41	45	1.21	77	2.13
22	1.84	31	1.42	47	1.26	79	2.41
24	1.90	32	1.43	49	1.37	81	2.61
26	1.95	33	1.44	51	1.47	83	2.81
28	2.00	34	1.45	53	1.57	85	3.01
30	2.05	35	1.46	55	1.67	87	3.21
32	2.10	36	1.47	57	1.77	89	3.41
34	2.15	37	1.48	59	1.87	91	3.61
36	2.20	38	1.49	61	1.97	93	3.81
38	2.25	39	1.50	63	2.07	95	4.01
40	2.30	40	1.51	65	2.17	97	4.21
42	2.35	41	1.52	67	2.27	99	4.41
44	2.40	42	1.53	69	2.37	101	4.61
46	2.45	43	1.54	71	2.47	103	4.81
48	2.50	44	1.55	73	2.57	105	5.01
50	2.55	45	1.56	75	2.67	107	5.21
52	2.60	46	1.57	77	2.77	109	5.41
54	2.65	47	1.58	79	2.87	111	5.61
56	2.70	48	1.59	81	2.97	113	5.81
58	2.75	49	1.60	83	3.07	115	6.01
60	2.80	50	1.61	85	3.17	117	6.21

OTHER PROVISIONS

Payment of Premium. All premiums are payable on or before their due dates at the Home Office of the Company or to such other place as may be designated by the Company. Other premium payments may be made by the Premium Payee or his authorized agent to the Secretary or the Treasurer of the Company, and transmitted by the premium payee to the Company. No premium may be withheld to collect a premium from the holder and official premium payee, and no premium may be withheld from the holder and official premium payee if the premium payee has timely sent annually to each holder an account of the Company's premium payments made to him. Any premium payment may be charged by agreement in writing and not otherwise, to the Premium Payee, and any premium payment may be made to the Premium Payee beyond the date when the next payment becomes due, except that the amounts provided for herein after deduct premium payment

Self-Insurance.—In every case where the sum during the first two years of the year, whether the insured became or became liable under this Policy, or he was entitled to the premium thereon which has been paid to and received by the Company, no more.

The Contract. The Policy and its rider, a copy of which is attached hereto, constitute the entire contract. All rights and benefits by the Company or its agents or servants of fraud, be deemed rejected, and no statement or representation by the Company or its agents or servants shall be contained in the written application and proposal or in any rider, endorsement or addendum thereto, that may conflict with the foregoing. No agent is authorized to make or issue any statement or representation that purports to amend, qualify, or otherwise limit the terms of this Policy, when issued. No agent is authorized to make or issue any statement or representation of promising or to waive any lapse or lateness or any of the conditions or restrictions of this Policy. All losses under this Policy are payable at the Home Office of the Company, in the City and County of New York.

Incontestability. The Policy shall be incontestable after two years from date of issue except for non-payment of premiums or failure to provide accurate information relating to liability and Possible Indemnity Benefits.

REGISTER OF CHANGE OF BENEFICIARY

NOTE.—NO CHARGE IS MADE FOR SMALL TAKES, BUT FEES ARE AS INDICATED ON THIS PRICE LIST TO COMPANY AT THE HOME OFFICE.

REGISTER OF CHANGE OF BENEFICIARY		
NOTE: NO CHANGE OF BENEFICIARY SHALL TAKE EFFECT UNLESS ENDORSED ON THIS PAGE BY THE COMPANY AT ITS HOME OFFICE.		
DATE OF REQUEST	BENEFICIARY	ENDORSED BY
1-2-62	J. S. W. C. & Son John S. Williams Son & Sons	

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10-452-365

10-452-366

APPLICATION TO THE NEW YORK LIFE INSURANCE COMPANY—Part I.

John C. Kuhn

Residence	Place of Business	Present Occupation	Born at _____
Carin	Construction	State exact duties in full Contractor and Builder, supervisor	on _____ day of _____ 19____
Employment		Other Occupations (if any)	Married <input checked="" type="checkbox"/> Single or nationality _____ (Works out one)
R.F.D.	Name of firm or employer		Send all communications to _____ Residence <input checked="" type="checkbox"/> Work <input type="checkbox"/> (Works out one)
Former Residence	Former place of business		Former firm or employer _____
McGoyen St., Bronx			
The amount required unless change has taken place within past two years.			

Y TO THE NEW YORK LIFE INSURANCE COMPANY FOR INSURANCE AS FOLLOWS:

Amount to be insured, \$	Premiums how payable,	Age nearest birthday
100000	semi annual	41
with	Disability Benefits, 1% Monthly	Date Policy date of this application
	Double Indemnity Benefit	as of _____ date Policy date of this application
(Works out benefit not desired)		
Intend to be applied towards	Left to accumulate at interest, subject to my order;	
(Applied to premium due date paid in advance)	Applied to premium due date paid in advance;	(Works out less)
Option * applies only to Endowment policies containing the Accelerative Endowment option.		
Designate as Beneficiary to receive the proceeds of policy in event of death, and reserve the right to change the Beneficiary from time to time.		
Beneficiary (Print name in full) VENICE C. KUHN		
He resides at 175 M. Highway Bronx, New York Relationship to me		
The following is all the insurance I now have on my life: U.S. Life \$100000.00		
State name of Company and Amount (If none, say none)		
The insurance for which I am now applying is not intended to take the place of insurance carried with this or any other Company. If it is, give particulars:		
The insurance on my life the amount which includes benefits in event of total disability is \$ _____ (If none, say none)		
Company has declined to issue insurance on my life or refused or offered to issue insurance on my life differing from insurance applied for, except as follows: (If none, say none)		

ADDITIONS OR AMENDMENTS (For Home Office use only)

On the 5/20/00 at Bronx, New York
 Written with premium payable quarterly.

It is mutually agreed as follows: 1. That the insurance hereby applied for shall not take effect unless and until the policy is issued to and received by the applicant and the first premium thereon paid in full during his lifetime, and then only if the applicant has consulted or been treated by any physician since his medical examination; provided, however, that if the applicant, at the time of this application, pays the amount in cash the full amount of the first premium for the insurance applied for in Questions 2 and 3 declared in this application and receives from the agent a receipt therefor on the receipt form which is attached hereto, and if the Company, after medical examination and investigation, shall be satisfied that the applicant was, at the time of making this application, insurable and entitled under the Company's rules and standards to the insurance, on the plan and for the amount applied for in Questions 2 and 3, at the Company's published premium rate corresponding to the applicant's age, then said insurance shall take effect and be insurable and subject to the provisions of the policy applied for from and after the time this application is made, whether the policy is issued to and received by the applicant or not. 2. That a receipt on the form attached as a coupon to this application form is the receipt the agent is authorized to give for any payment made before the delivery of the policy. 3. That only the President, a Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company can make, modify or discharge contracts, or waive any Company's rights or requirements, that notice to or knowledge of the soliciting agent or the Medical Examiner is not notice to the knowledge of the Company, and that neither one of them is authorized to accept risks or to pass upon insurability. 4. That by signing and accepting said policy, any additions or amendments hereto which the Company may make and refer to in Question 9 above and "Additions or Amendments" are hereby ratified.

I declare that this day of May 20, 1900.
 Signature of the person applying for insurance John C. Kuhn
Print name in full

Names and Residences of three intimate friends
Rev. Tolson J. Landis
Frank J. Smith John C. Kuhn

DECLARATION TO BE SIGNED BY APPLICANT UPON MAKING ANY PAYMENT WITH THIS APPLICATION

Dated at Bronx, New York 1900

I hereby Declare that I have paid to

John C. Kuhn John C. Kuhn
 and that I hold his receipt for the same, made up without alteration, in the original handwriting, in date and number with this application. I attest to the terms of this receipt.

Signature of Applicant

YEAR OF RECEIPT

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